IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 42 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHRI ASHOK J. PANDYA - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Respondent(s)

==========

Appearance :
MR NR DIVETIA for Applicant(s) :1,MR SN DIVATIA for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 04/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Shri S.N. Divetia, learned counsel for the assessee, Mr Manish R.Bhatt, learned counsel for the Revenue.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A'. Ahmedabad, under section 256 (1) of the Indian Income Tax Act, 1961 has referred the following questions for opinion of this Court which arises out of Income Tax Appeal No.3067/Ahd/1991 pertinent to Assessment Year, 1989-90:

> *"1. Whether on the facts and circumstances of the case Income Tax Tribunal was justified in holding that, incentive bonus which the assessee as Development Officer received from the LIC, was not entitled to deduction at 40%.*
>
> *2. Whether on the facts and circumstances of the case the Tribunal was justified in holding that 40% of the incentive bonus was not exempt under section 10(14) of the Income Tax Act.*
>
> *3. Whether on the facts and circumstances of the case, the Tribunal was justified in*

holding that no deduction on account of expenses at the rate of 40% or any other rate out of incentive bonus received by the assessee as Development Officer of LIC was not deductible before computing the taxable income of the applicant.

4. Whether the Hon'ble Tribunal was justified in facts and or law in allowing the appeal of the revenue relying on the decision of ITAT Bench in the case of ITO vs. P.M.Suthar 214 ITR 30."

3. The applicant-assessee is an individual employee with Life Insurance Corporation of India as Development Officer. The applicant had filed his return of income declaring total income of Rs. 21,765/-, in the said return he had claimed deduction of Rs. 14,264/- @ 40% from the incentive bonus earned by the applicant from L.I.C. The Assessing Officer passed an intimation under section 143 (1)(a) of the Act wherein several adjustments were made disallowing various deductions claimed by the applicant including

40% of incentive bonus amounting to Rs. 14,264/-. The applicant made an application dated 9.4.1990 and yet another application dated 11.4.1990 submitting that there were mistakes in the adjustments made by the learned Assessing Officer. The Assessing Officer thereafter passed an order dated 20.12.1990 under section 154 of the Act determining the total income at Rs. 44,890/-. The applicant-assessee being aggrieved by the said order, filed an appeal to Dy.C.I.T. (Appeals), who, by his order dated 6.3.1991 allowed the appeal and granted deduction of 40% of the incentive bonus as exempted under section 10(14) of the Act. In appeal by the Department, the order passed by the learned Dy.C.I.T. vide his order dated 31.7.1996 held that the applicant-assessee was not entitled to deduction of 40% of the incentive bonus.

4. On an application under section 256(1) of the Act, the Tribunal has made Reference in relation to the above referred questions.

5. All the four questions referred for consideration and opinion would basically depend upon

one single point that whether the applicant would be entitled to deduction to the extent of 40% of the incentive bonus earned and received by the assessee-applicant.

6. In the matter of ***C.I.T. vs. Kiranbhai H Shelat*** (1999) 235 ITR 635, a Division Bench of this Court, after discussing all the legal issues, finally held that the assessee would be entitled to 30% deduction from the incentive bonus and that too on verification of the expenditure.

7. Observing the above judgment in the case of *Kiranbhai H Shelat (supra)*, we have already held that the assessee would be entitled to deduction to the extent of 30% subject to verification only. We accordingly answer the questions. The Reference is accordingly disposed of. No costs.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp